IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.3024 OF 2004
IN
WRIT PETITION NO.5400 OF 1996

Union of India & Others .... Petitioners
Vs.
The Workmen,
through the General Secretary
of ISP/CNP Staff Union
& Another .... Respondents

Shri Atul G. Damle for the Petitioners.

Shri S.M. Dharap for the Respondent (No.1).

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 22, 2004

P.C:

1. Heard the learned Advocates for the parties.

2. This is an application filed for setting aside the order of dismissal of the petition filed by the Government and for restoration thereof.

3. The petitioners' case is that the writ petition came up for hearing before the Court on 9-8-2004. The clerk attending the Court in relation to Government matters by oversight did not notice the matter and did not inform about the same to the concerned department. It is, however, specifically stated in para 6 of the

application that:-

> "The Petitioners state that however, the Advocate appearing on behalf of the Respondents had orally informed about the said matter being on board to the Counsel appearing for the Petitioners. However, since the Counsel was engaged in some other Court on the said day, and had no information about the said matter at the relevant time and he could not remain present in Court when the matter was called out and was dismissed for non-appearance of the Petitioners."

The grounds stated for setting aside the order of dismissal of the petition apparently disclose that the clerk who was required to attend the Court in relation to the Government matters in the Court had not been vigilant and careful in pursuing with the matter. The same further discloses that the Advocate appearing for the petitioners was informed about the matter being listed for hearing by none other than by the Advocate for the respondent (No.1) and yet no steps were taken to ensure appearance on behalf of the petitioners.

3. Though the application clearly discloses that by

oversight it escaped the attention of the clerk, attending the Court matters, the application does not disclose the name of the clerk nor the application is accompanied by the affidavit of any such clerk. The application also does not disclose any action either having been taken or at least proposed against the clerk for failure on his part to perform his duties. This is not the first time that such an application is being made contending about failure on the part of the clerk to perform his duties in relation to the matters fixed for hearing in the Court. Whenever the Government matter is dismissed, either it is the mistake on the part of the clerk in his noting the matter listed for hearing or that the Advocate for the Government is being found busy in another Court. Both such reasons are in fact and can be no justification for restoration of the application/petition once dismissed. It is the duty of every clerk appointed by the Government to attend the Court matters to be punctual and vigilant in attending the Court matters and to ensure that the Court matters are not dismissed for default on the part of the Government. In case there is any failure on the part of the concerned clerk, it is the duty of the Government department to take necessary action against such clerk. I am yet to come across a single incident being pointed out on behalf of the Government of having taken any such action against any such clerk, though in number of

matters failure on the part of the clerk is pleaded as justification for restoration of the matter on account of dismissal for default.

4. The Advocate being busy in another Court can also be no reason for restoration of the matter dismissed for default. The provisions of Order 17 of the Code of Civil Procedure are very clear in that regard. Being so, and this provision being statutory provision, it does not befit the Government to plead for restoration of the matter dismissed on the ground of default on account of the Advocate failing to appear in the Court on the ground that he was busy in another Court.

5. In the case in hand, it is pertinent to note that though on behalf of the petitioners it is admitted that the Advocate for the petitioners was informed about the matter being listed for hearing by the Advocate for the respondent, the application is silent about the steps which were taken or could have been taken by the concerned Advocate to avoid the dismissal of the petition for default.

6. The learned Advocate for the petitioners having been pointed out these deficiencies in the application, sought leave to file further affidavit in that regard. Question of giving such opportunity to the petitioners

at this stage does not arise as it would virtually amount to allowing the petitioners to fill the loopholes and any further explanation would obviously be an afterthought to avoid the consequence of the lapses on the part of the petitioners in that regard.

7. Since the application does not disclose any sufficient and justifiable cause for non-appearance of the petitioners or the representative on their behalf on the day when the matter was called out and dismissed for default i.e., on 9-8-2004, the application is liable to be dismissed.

8. The application is also liable to be dismissed for having been not filed within the period of limitation as well as there being no sufficient cause disclosed for the condonation of delay. In fact, there is not even a prayer for the condonation of delay. Undisputedly, the matter was dismissed on 9-8-2004. The application was filed on 7-12-2004. It is also to be noted that the application was verified before the Assistant Superintendent of the Court by Shri B.K. Pathak, Deputy General Manager, India Security Press, Nasik on 4-12-2004. That was a working Saturday, yet the application was filed in the Court on 7-12-2004, third day thereafter. Inspite of knowing well that the application was already delayed by 2 months and 25 days,

no steps were taken to file the same immediately after the same was verified by the concerned officer.

9. All the above narrated facts disclose total lethargy and irresponsible attitude on the part of the Government officers in pursuing the matter. Being so, there is no case for recalling the order of dismissal and for restoration of the petition. Hence the application is dismissed.